

**Letter of Findings Number: 04-20120634P  
Tax Administration  
For Tax Year 2011**

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**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana retail merchant. The Indiana Department of Revenue ("Department") determined that Taxpayer had not timely remitted sales tax for the tax year 2011. The Department issued proposed assessments for base tax, a ten percent negligence penalty, and interest. Taxpayer protested the imposition of the penalty and interest. An administrative hearing was held and this letter of findings results. Further facts will be supplied as required.

**I. Tax Administration–Penalty.**

**DISCUSSION**

The Department issued a proposed assessment for base sales tax, penalty, and interest for the tax year 2011. Taxpayer protests the imposition of penalty and requests a waiver of that penalty. Taxpayer also protests the imposition of interest. The Department notes that it is prohibited from waiving interest under IC § 6-8.1-10-1(e).

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

If a person:

...

(4) fails to timely remit any tax held in trust for the state;

...

the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

The Department considered Taxpayer's failure to timely remit sales tax to constitute negligence and so imposed penalty under IC § 6-8.1-10-2.1(a). As a result of the protest process, Taxpayer has affirmatively established that it acted reasonably in its efforts to comply with Indiana's tax filing requirements, as required by [45 IAC 15-11-2\(c\)](#). The penalty will be waived. However, the Department takes this opportunity to notify Taxpayer that it is now aware of its sales tax obligations and that penalty may be imposed if this scenario occurs again. Also, the Department may not waive interest, as provided by IC § 6-8.1-10-1(e).

**FINDING**

Taxpayer's protest is sustained regarding penalty and denied regarding interest.

*Posted: 07/31/2013 by Legislative Services Agency*

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